IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 132 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHABHAI SHANKERBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BHARAT T RAO for Petitioners No. 1-2

MR KT DAVE AGP for Respondents No. 1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/01/2002

ORAL JUDGEMENT

The petitioners herein challenge the validity of the order dated 29th August, 1985 made by the competent authority under the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, `the Act'] and the judgment and order dated 31st January, 1992 passed by the

Urban Land Tribunal, Ahmedabad in Appeal No. Vadodara-283 of 1988 and the communication dated 23rd January, 1996 of the State Government.

It appears that the petitioners were the owners of several pieces of land situated at village Tarsali, within the Vadodara Urban Agglomeration. The petitioners, therefore had filed statement of their holding in Form No. I under Section 6 of the Act. The said statement was processed by the competent authority and under order dated 18th January, 1984 it was declared that the petitioners held excess vacant land to the extent of 12,118 sq.meters. The details of the said excess vacant land was published in the Government Gazette on 26th April, 1984. The Notification vesting the said excess vacant land in the State Government under Section 10 (3) of the Act was published in the Government Gazette on 20th June, 1984. Feeling aggrieved, the petitioners preferred appeal before the Urban Land Tribunal under Section 33 of the Act. The said appeal was allowed by the said Tribunal on 29th December, 1984. The matter was remanded to the competent authority for decision afresh. After the remand, draft statement under section 8 (4) of the Act was prepared on 29th August, 1985. The petitioners were declared to be holding excess vacant land to the extent of 540 sq. meters. Notification under Section 10(1) of the Act was published in the Government Gazette on 21st November, 1985. The said excess vacant land was vested in the State Government by issuing Notification under Section 10(3) of the Act which was published in the Government Gazette on 24th April, 1986. The notice to hand over the possession under Section 10(5) of the Act was given on 10th July, 1986 and the possession thereof was taken over in presence of panch witnesses under Section 10 (6) of the Act on 10th November, 1987. Pending the above proceeding, the order dated 29th August, 1985 made by the competent authority was taken in review by the State Government under Section 34 of the Act and was confirmed on 26th August, 1987. Thereafter, the petitioner preferred appeal before the Urban Land Tribunal against the above referred order dated 29th August, 1985 in above referred appeal no. Vadodara-283 of 1988. The said appeal was preferred after a delay of more than three years. The Tribunal was of the opinion that there were no cogent grounds to condone the said delay. Nonetheless, the Tribunal decided the said appeal on merits and under order dated 31st January, 1992 dismissed the same. The said order was not challenged further by the petitioner but the petitioners approached the State Government and requested the State Government to take the

order dated 29th August, 1985 in review under Section 34 of the Act. The said application was rejected by the State Government under its communication dated 23rd January, 1996. The petitioners were informed that since the petitioners had preferred appeal against the impugned order dated 29th August, 1985, the same could not be taken into review under Section 34 of the Act. Feeling aggrieved, the petitioners have preferred the present writ petition.

It is the case of the petitioners that under the Development Plan, a Town Planning Road has been provided for over their land. The petitioners are, therefore, entitled to deduction not only of the area on which the road is proposed but also the land adjacent to the proposed road which could not be built up, in view of the prevailing building regulations. The authorities below, however, have not considered the restrictions on construction on the margin land and have not given due deduction from the holding of the petitioners.

The challenge to the impugned orders deserves to be rejected on the ground of delay and latches alone. The petitioners had earlier preferred appeal before the Urban Land Tribunal against the order of the competent authority made on 18th January, 1984 and the subsequent proceedings. Hence, it must be held that the petitioners were aware of the remedy available against the order of the competent authority. However, the petitioners did not choose to avail of the said remedy of appeal under section 33 of the Act against the order of the competent authority dated 29th August, 1985. Thereby the petitioners allowed the competent authority to proceed further under the Act and also to take over the possession of the excess vacant land. With the issuance and publication of the Notification under Section 10 (3) of the Act, the said excess vacant land has been vested in the State Government free from all encumbrances. The possession of the excess vacant land has also been taken over by the State Government as far back as on 10th November, 1987 i.e., long before the date of the appeal preferred by the petitioners. Thus, the petitioners allowed the matter to proceed further beyond the point of no return. The challenge to the order of the competent authority is, therefore, not sustainable. Further, even the order of the Tribunal made on 31st January, 1992 has not been challenged by the petitioners for another five years. The petitioners having availed of the remedy of appeal under section 33 of the Act, however belatedly, the order of the competent authority could not have been taken in review by the State Government under Section 34

of the Act. Hence, I am of the view that the impugned communication dated 31st January, 1996 of the State Government is in consonance with Section 34 of the Act and does not warrant interference.

For the aforesaid reasons, the petition is dismissed. Rule is discharged. Interim relief is vacated.

[Ms. R.M Doshit, J.]

Prakash*